

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,695

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a forty-one-year-old woman with a high school (GED) education. The record indicates that over the past several years she has worked sporadically at a variety of unskilled jobs, each of short duration.

The petitioner applied for medicaid primarily on the basis of "osteoporosis". The medical record, however, fails to reveal any significant physical problem. It indicates that the petitioner received treatment at a health clinic on at least two occasions in 1993 for "migraine headaches", but the notes of that treatment do not indicate that it was considered a serious problem. (The petitioner was working at a restaurant at that time.) A consultative physical examination of the petitioner in January, 1994, found no significant problem beyond "moderate obesity", with the additional notation: "Overall, generally good range of motion all joints and muscle groups within the limitations of her height and weight."

The record indicates, however, that the petitioner does have a history of depression and "character disorder with schizoid traits". The report of a consultative psychological examination of the petitioner performed in February, 1994, concluded with the following:

. . .

My suggestion is that [petitioner] has a character disorder. She certainly has odd thinking; there are suggestions of paranoid thinking and grandiose thoughts. She is probably depressed; the mood disorder may be cyclical, never good but worse at times. She continues to have a difficult life. Some of these problems may be generated by her poor judgment. She may not be coping as well as she used to. She may also drink more than she lets on.

The claim of "psychosis" was apparently generated by one of [petitioner's] providers, not by her. There may have been times during depressive episodes that "brief reactive psychosis" episodes may have occurred. Generally, I have little, if any, reassurance that [petitioner's] problems will not continue. I think she is unpredictable and unstable in her affect, thought content, and her behaviors.

She currently appears to be competent to manage her funds.

At the request of the hearing officer the same consulting psychologist completed a (DDS) form "mental capacities assessment" of the petitioner in May, 1994. On the form he indicated that the petitioner's abilities were "unlimited" in the following areas (which comprised all but one of the areas identified on the form):

1. Understand, remember, and carry out an extensive variety of technical and/or complex job instructions.
2. Understand, remember, and carry out detailed but uncomplicated job instructions.
3. Understand, remember, and carry out simple one- or two-step job instructions.
4. Interact with supervisors and coworkers.
5. Deal with the public.

For the remaining area of inquiry--"6. Maintain concentration and attention"--the consulting psychologist noted "variable", with the following explanation:

May be inconsistent and variable depending on degree of stressors and their effect on her mood. This could make her ability to maintain a consistent work record (show up, do well, etc.) problematic.

During the course of this appeal process, beginning in March, 1994, the petitioner has been seeing an "outpatient therapist" at the local community mental health agency on a weekly basis. In responding to a similar solicitation by the hearing officer to provide a "mental capacities assessment" of the petitioner this therapist indicated that

the petitioner had the "unlimited" ability to "understand, remember, and carry out detailed but uncomplicated job instructions" as well as "simple one- or two-step job instructions". (The therapist stated he could not comment on the petitioner's ability to "understand, remember, and carry out an extensive variety of technical and/or complex job instructions".) As to the petitioner's ability to "interact with supervisors and coworkers" and to "deal with the public", the therapist commented that the petitioner "appears to hold odd and unusual beliefs which could impact interaction with the public, supervisors and coworkers. However, I do not know if she would express these beliefs and have left (these) questions unanswered."

Like the consulting psychologist, see supra, the one area the therapist noted as "limited" was the petitioner's ability to "maintain concentration and attention". The therapist's explanation for this response, however, differed somewhat from that of the consulting psychologist. The therapist noted that

the petitioner "has kept all her appointments and has been punctual about each session", but that she "has difficulty remaining focused on stated topics or providing answers to direct questions leading me to consider her concentration and attention limited". The therapist left blank, however, the place on the form where he was asked: "Briefly describe in what ways the mental functions and mental demands shown above as 'limited' result in impaired capacity to perform the activities of work. Include discussion of work-related effects of any additional mental function impairment not identified above."

Although both the above reports identify the petitioner's concentration and attention as "limited", they are also consistent in indicating that the petitioner has no other area of mental activity or demand that would necessarily impose a significant work-related impairment. Neither provider, although given the specific opportunity to do so, indicated in so many words that the petitioner is incapable of maintaining gainful employment. In fact, the primary concern raised by the consulting psychologist--that the "degree of stressors" the petitioner was experiencing might make her ability to maintain a job "problematic"--appears to be less of an issue since the petitioner (to her credit) began receiving regular weekly counseling. It is also deemed significant that the petitioner's therapist did not allude to any situational stress as being a problem regarding the petitioner's employability. The treating therapist's diagnoses of the petitioner--"schizotypal personality disorder" and "alcohol abuse"--are very similar to those of the consulting psychologist; but, unlike the consulting psychologist, the petitioner's therapist describes the petitioner's alcohol problems as being "in remission".

The petitioner's own testimony focused mainly on unspecific (and undocumented) complaints of "back pain spells". She stated, however, that she rides a bicycle to all her appointments; and she provided few specifics as to how her overall day-to-day physical activities are limited. From her testimony and demeanor it appears that the petitioner's insight into her non-exertional impairments is limited. She did indicate, however, that she had recently provided Vocational Rehabilitation with information regarding her recently-initiated counseling; and that she hoped to be found eligible for their services.⁽¹⁾

In light of the above evidence it cannot be found that the petitioner's impairments prevent her from engaging in all work activity, especially jobs that would not require much concentration and attention to detail--such as those of the type identified by the Department (DDS) in its decision

(e.g., grocery bagger and cleaning jobs), as well as restaurant work, which it appears the petitioner has done in the past.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national

economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case the medical evidence, as noted above, indicates that the petitioner has problems with concentration and attention; but it does not establish that the petitioner--a forty-one-year-old woman with a high school education--is precluded from all work activity at this time. Therefore, the Department's decision is affirmed.

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1. The hearing officer advised the petitioner to follow up on Vocational Rehabilitation services and of her appeal rights if VR turned her down. He also advised her to reapply for medicaid if in the opinion of her therapist, or any other doctor or agency, she is found to be unable to work.